

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BASSETT UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013020609

ORDER GRANTING REQUEST TO
WITHDRAW EXPEDITED ISSUES
AND DISMISSING EXPEDITED
HEARING

On February 15, 2013, Student filed a Due Process Hearing Request (complaint) against District. On February 20, 2013 the Office of Administrative Hearings (OAH) issued a Scheduling Order and Notice of Expedited Non-Expedited] Prehearing Conference (PHC) Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for an Expedited PHC on March 11, 2013, and an Expedited Due Process Hearing on March 18, 19, and 20, 2013. The Scheduling Order set the Unexpedited PHC for April 3, 2013, and the Unexpedited Due Process Hearing for April 11, 2013, continuing day to day, Monday through Thursday, at the discretion of the Administrative Law Judge (ALJ). The Scheduling Order also set mediation dates for the Expedited and Non-Expedited Proceedings. The mediation for the Non-Expedited Proceeding is scheduled for March 21, 2013.

The Expedited PHC was held as scheduled. On March 12, 2013, Student filed a notice withdrawing all issues required to be heard by OAH in an Expedited Due Process Hearing.

APPLICABLE LAW

Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.350 (2006) et seq. (See Ed. Code, § 48915.5.) A school district may only impose school discipline under limited circumstances, and a special education student may only be disciplined in the same way as non-disabled students if the school district has held a meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34

C.F.R. § 300.532(a) (2006).) In such event, an expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (Ed. Code, § 56504.5, subd. (a); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not allow OAH to make exceptions or grant continuances of expedited matters. (34 C.F.R. § 300.532(c)(2).) In sum, a matter can only be unexpedited or continued if no issue is alleged related to school discipline or a manifestation determination meeting, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

Student's due process complaint, as drafted, required OAH to schedule an Expedited Due Process Hearing because it facially challenged (and thereby appealed) District's suspension of Student as a wrongful manifestation determination. OAH is no longer required to conduct an Expedited Due Process Hearing, because Student clearly and unambiguously withdrew all allegations related to a wrongful manifestation determination.

ORDER

1. Student's request to withdraw the Expedited Due Process hearing is granted.
2. The expedited Due Process hearing dates are vacated.
3. The Unexpedited Due Process Hearing shall proceed on the following dates as set forth in the Scheduling Order, until and unless the parties request and are granted a continuance: Mediation, March 21, 2013; PHC, April 3, 2013; and Due Process Hearing, April 11, 2013, continuing day to day, Monday through Thursday, at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: March 15, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings